

**CONSULTING SERVICES AGREEMENT BETWEEN
THE CITY OF MILPITAS AND LSA ASSOCIATES, INC.**

THIS AGREEMENT for consulting services is made by and between the City of Milpitas ("City") and LSA Associates, Inc ("Consultant") as of May 18, 2004 in Milpitas, California.

AGREEMENT

Section 1. SERVICES. Subject to the terms and conditions set forth in this Agreement, Consultant shall provide to City the services described in the Scope of Work attached as Exhibit A at the time and place and in the manner specified therein. In the event of a conflict in or inconsistency between the terms of this Agreement and Exhibit A, the Agreement shall prevail.

- 1.1 **Term of Services.** The term of this Agreement shall begin on the date first noted above and shall end on **DATE**, the date of completion specified in Exhibit A, and Consultant shall complete all the work described in Exhibit A prior to that date, unless the term of the Agreement is otherwise terminated or extended, as provided for in Section 8. The time provided to Consultant to complete the services required by this Agreement shall not affect the City's right to terminate the Agreement, as provided for in Section 8.
- 1.2 **Standard of Performance.** Consultant shall perform all services required pursuant to this Agreement in the manner and according to the highest and best professional standards observed by a practitioner of the profession in which Consultant is engaged in the geographical area in which Consultant practices its profession. Consultant shall prepare all work products required by this Agreement in a substantial, first-class manner and shall conform to the highest and best professional standards of quality observed by a person practicing in Consultant's profession.
- 1.3 **Professional Skill.** It is mutually agreed by the parties that City is relying upon the professional skill of the consultant as a specialist in the work, and Consultant represents to the City that its work shall conform to the highest and best professional standards of the profession. Acceptance of the Consultant's work by the City does not operate as a release of Consultant's representations. It is intended that Consultant's work shall conform to the highest and best standards of accuracy, completeness and coordination.
- 1.4 **Assignment of Personnel.** Consultant shall assign only competent personnel to perform services pursuant to this Agreement. Exhibit A shall name any specific personnel (including title and hourly charge rate) who shall be performing services. In the event that City, in its sole discretion, at any time during the term of this Agreement, desires the reassignment of any such persons, Consultant shall, immediately upon receiving notice from City of such desire of City, reassign such person or persons.

- 1.5 **Time.** Consultant shall devote such time to the performance of services pursuant to this Agreement as may be reasonably necessary to meet the standard of performance provided in Section 1 above and to complete Consultant's obligations hereunder.

Section 2. COMPENSATION. City hereby agrees to pay Consultant an amount not to exceed **\$135,000 (one hundred thirty-five thousand dollars)** for all services to be performed and reimbursable costs incurred under this Agreement. City shall pay Consultant for services rendered pursuant to this Agreement at the time and in the manner set forth herein. The payments specified below shall be the only payments from City to Consultant for services rendered pursuant to this Agreement. Consultant shall submit all invoices to City in the manner specified herein. Except as specifically authorized by City, Consultant shall not bill City for duplicate services performed by more than one person.

Consultant and City acknowledge and agree that compensation paid by City to Consultant under this Agreement is based upon Consultant's estimated costs of providing the services required hereunder, including salaries and benefits of employees and subcontractors of Consultant. Consultant further represents that the amount of the compensation specified in this Section 2 shall be a guaranteed maximum price. Hourly rates for personnel performing services shall be as shown in Exhibit B. Consequently, the parties further agree that compensation hereunder is intended to include the costs of contributions to any pensions and/or annuities to which Consultant and its employees, agents, and subcontractors may be eligible. City therefore has no responsibility for such contributions beyond compensation required under this Agreement.

- 2.1 **Invoices.** Consultant shall submit invoices, not more often than once a month during the term of this Agreement, based on the cost for services performed and reimbursable costs incurred during the billing period. Invoices shall contain the following information:
- Serial identification of bills; ("Invoice #")
 - The beginning and ending dates of the billing period;
 - A Task Summary containing the City project name and number, purchase order number, Project Manager, original contract amount, the amount of prior billings, the total due this period, the balance available under the Agreement, and the percentage of completion, if applicable;
 - Consultant shall use the City's "Consultant Progress Payment" format specified in Exhibit C for invoice tracking and shall submit the form with each invoice.
 - At City's option, for each work item in each task, a copy of the applicable time entries or time sheets shall be submitted showing the name of the person doing the work, the hours spent by each person, a brief description of the work, and each reimbursable expense;
 - The total number of hours of work performed under the Agreement by Consultant and each employee, agent, and subcontractor of Consultant performing services hereunder, as well as a separate notice when the

total number of hours of work by Consultant and any individual employee, agent, or subcontractor of Consultant reaches or exceeds 800 hours, which shall include an estimate of the time necessary to complete the work described in Exhibit A;

- The Consultant's signature.

2.2 Monthly Payment. City shall make monthly payments, based on invoices received, for services satisfactorily performed, and for authorized reimbursable costs incurred. City shall have thirty (30) days from the receipt of an invoice that complies with all of the requirements above and is otherwise acceptable to the City to pay Consultant. In the event that an invoice is not acceptable to the City, said invoice shall be returned to Consultant within thirty (30) days of the City's receipt of the invoice with a detailed explanation of the deficiency. City's obligation to pay a returned invoice shall not arise earlier than thirty (30) days after resubmission of the corrected invoice.

2.3 Total Payment. City shall pay for the services to be rendered by Consultant pursuant to this Agreement. City shall not pay any additional sum for any expense or cost whatsoever incurred by Consultant in rendering services pursuant to this Agreement. City shall make no payment for any extra, further, or additional service pursuant to this Agreement.

In no event shall Consultant submit any invoice for an amount in excess of the maximum amount of compensation provided above either for a task or for the entire Agreement, unless the Agreement is modified prior to the submission of such an invoice by a properly executed change order or amendment. In the event that Consultant identifies additional work outside the scope of services specified in Exhibit A that may be required to complete the work required under this Agreement, Consultant shall immediately notify the City and shall provide a written not-to-exceed price for performing this additional work. Consultant shall not perform extra work without specific written City approval.

2.4 Hourly Fees. Fees for work performed by Consultant on an hourly basis shall not exceed the amounts shown on Exhibit B.

2.5 Reimbursable Expenses. Reimbursable expenses are included in the total not-to-exceed amount of compensation provided under this Agreement.

2.6 Payment of Taxes. Consultant is solely responsible for the payment of employment taxes incurred under this Agreement and any other applicable federal or state taxes.

2.7 Payment upon Termination. In the event that the City or Consultant terminates this Agreement pursuant to Section 8, the City shall compensate the Consultant for all outstanding costs and reimbursable expenses incurred for work satisfactorily

completed as of the date of written notice of termination. Consultant shall maintain adequate logs and timesheets in order to verify costs incurred to that date. The City shall have no obligation to compensate Consultant for work not verified by logs or timesheets.

- 2.8 Authorization to Perform Services.** The Consultant is not authorized to perform any services or incur any costs whatsoever under the terms of this Agreement until receipt of a written Notice to Proceed from the City.

Section 3. FACILITIES AND EQUIPMENT. Except as set forth herein, Consultant shall, at its sole cost and expense, provide all facilities and equipment that may be necessary to perform the services required by this Agreement. City shall make available to Consultant only the facilities and equipment listed in this section, and only under the terms and conditions set forth herein.

City shall furnish physical facilities such as desks, filing cabinets, and conference space, as may be reasonably necessary for Consultant's use while consulting with City employees and reviewing records and the information in possession of the City. The location, quantity, and time of furnishing those facilities shall be in the sole discretion of City. In no event shall City be obligated to furnish any facility that may involve incurring any direct expense, including but not limited to computer, cellular telephone, long-distance telephone, or other communication charges, vehicles, and reproduction facilities.

If the performance of the work specified in Exhibit A requires destructive testing or other work within the City's public right-of-way, Consultant, or Consultant's subconsultant, shall obtain an encroachment permit from the City.

Section 4. INSURANCE REQUIREMENTS. Before beginning any work under this Agreement, Consultant shall procure "occurrence coverage" insurance against claims for injuries to persons or damages to property that may arise from or in connection with the performance of the work hereunder by the Consultant and its agents, representatives, employees, and subcontractors. Consultant shall provide proof satisfactory to City of such insurance that meets the requirements of this section and under forms of insurance satisfactory in all respects to the City. Consultant shall maintain the insurance policies required by this section throughout the term of this Agreement and shall produce said policies to the City upon demand. The cost of such insurance shall be included in the Consultant's price. Consultant shall not allow any subcontractor to commence work on any subcontract until Consultant has obtained all insurance required herein for the subcontractor(s) and provided evidence thereof to City. Verification of the required insurance shall be submitted and made part of this Agreement prior to execution.

- 4.1 Workers' Compensation.** Consultant shall, at its sole cost and expense, maintain Statutory Workers' Compensation Insurance and Employer's Liability Insurance for any and all persons employed directly or indirectly by Consultant. The Statutory Workers' Compensation Insurance and Employer's Liability Insurance shall be provided with limits of not less than ONE MILLION DOLLARS (\$1,000,000.00) per accident. In the alternative, Consultant may rely on a self-

insurance program to meet those requirements, but only if the program of self-insurance complies fully with the provisions of the California Labor Code. Determination of whether a self-insurance program meets the standards of the Labor Code shall be solely in the discretion of the City Attorney. The insurer, if insurance is provided, or the Consultant, if a program of self-insurance is provided, shall waive all rights of subrogation against the City and its officers, officials, employees, and volunteers for loss arising from work performed under this Agreement.

4.2 Commercial General and Automobile Liability Insurance.

4.2.1 General requirements. Consultant, at its own cost and expense, shall maintain commercial general and automobile liability insurance for the term of this Agreement in an amount not less than ONE MILLION DOLLARS (\$1,000,000.00) per occurrence, combined single limit coverage for risks associated with the work contemplated by this Agreement. If a Commercial General Liability Insurance or an Automobile Liability form or other form with a general aggregate limit is used, either the general aggregate limit shall apply separately to the work to be performed under this Agreement or the general aggregate limit shall be at least twice the required occurrence limit. Such coverage shall include but shall not be limited to, protection against claims arising from bodily and personal injury, including death resulting therefrom, and damage to property resulting from activities contemplated under this Agreement, including the use of owned and non-owned automobiles.

4.2.2 Minimum scope of coverage. Commercial general coverage shall be at least as broad as Insurance Services Office Commercial General Liability occurrence form CG 0001 (ed. 11/88) or Insurance Services Office form number GL 0002 (ed. 1/73) covering comprehensive General Liability and Insurance Services Office form number GL 0404 covering Broad Form Comprehensive General Liability. Automobile coverage shall be at least as broad as Insurance Services Office Automobile Liability form CA 0001 (ed. 12/90) Code 1 ("any auto"). No endorsement shall be attached limiting the coverage.

4.2.3 Additional requirements. Each of the following shall be included in the insurance coverage or added as an endorsement at least as broad as Insurance Services Office form number CG 20 10 (10/01 ed.) to the policy:

- a. City and its officers, employees, agents, contractors, consultants, and volunteers shall be covered as insureds with respect to each of the following: liability arising out of activities performed by or on

behalf of Consultant, including the insured's general supervision of Consultant; products and completed operations of Consultant; premises owned, occupied, or used by Consultant; and automobiles owned, leased, or used by the Consultant. The coverage shall contain no special limitations on the scope of protection afforded to City or its officers, employees, agents, contractors, consultants, or volunteers.

- b. The insurance shall cover on an occurrence or an accident basis, and not on a claims-made basis.
- c. An endorsement must state that coverage is primary insurance with respect to the City and its officers, officials, employees, contractors, consultants, and volunteers, and that no insurance or self-insurance maintained by the City shall be called upon to contribute to a loss under the coverage.
- d. Any failure of CONSULTANT to comply with reporting provisions of the policy shall not affect coverage provided to CITY and its officers, employees, agents, and volunteers.
- e. An endorsement shall state that coverage shall not be suspended, voided, or canceled by either party, reduced in coverage or in limits, except after thirty (30) days' prior written notice, has been given to the City.

4.3 Professional Liability Insurance. If Consultant shall be performing licensed professional services, Consultant shall maintain for the period covered by this Agreement professional liability insurance for licensed professionals performing work pursuant to this Agreement in an amount not less than ONE MILLION DOLLARS (\$1,000,000) covering the licensed professionals' errors and omissions.

- 4.3.1** Any deductible or self-insured retention shall not exceed \$150,000 per claim.
- 4.3.2** An endorsement shall state that coverage shall not be suspended, voided, canceled by either party, reduced in coverage or in limits, except after thirty (30) days' prior written notice, has been given to the City.
- 4.3.3** The policy must contain a cross liability clause.
- 4.3.4** The following provisions shall apply if the professional liability coverages are written on a claims-made form:

- a. The retroactive date of the policy must be shown and must be before the date of the Agreement.
- b. Insurance must be maintained and evidence of insurance must be provided for at least three years after completion of the Agreement or the work, unless waived in writing by the City, and if reasonably available to the Consultant at that time.
- c. If coverage is canceled or not renewed and it is not replaced with another claims-made policy form with a retroactive date that precedes the date of this Agreement, Consultant must provide extended reporting coverage for a minimum of five years after completion of the Agreement or the work. The City shall have the right to exercise, at the Consultant's sole cost and expense, any extended reporting provisions of the policy, if the Consultant cancels or does not renew the coverage.
- d. A copy of the claim reporting requirements must be submitted to the City prior to the commencement of any work under this Agreement.

4.4 Requirements for All Policies.

- 4.4.1 Acceptability of insurers.** All insurance required by this section is to be placed with insurers with a Bests' rating of no less than A.
- 4.4.2 Verification of coverage.** Prior to beginning any work under this Agreement, Consultant shall furnish City with certificates of insurance and with original endorsements effecting coverage required herein. The certificates and endorsements for each insurance policy are to be signed by a person authorized by that insurer to bind coverage on its behalf. The City reserves the right to require complete, certified copies of all required insurance policies at any time.
- 4.4.3 Subcontractors.** Consultant shall include all subcontractors as insureds under its policies or shall furnish separate certificates and endorsements for each subcontractor. All coverages for subcontractors shall be subject to all of the requirements stated herein.
- 4.4.4 Deductibles and Self-Insured Retentions.** Consultant shall disclose to and obtain the approval of City for the self-insured retentions and deductibles before beginning any of the services or work called for by any term of this Agreement.

During the period covered by this Agreement, only upon the prior express written authorization of the City, Consultant may increase such deductibles or self-insured retentions with respect to City, its officers, employees, agents, contractors, consultants, and volunteers. The City may condition approval of an increase in deductible or self-insured retention levels with a requirement that Consultant procure a bond, guaranteeing payment of losses and related investigations, claim administration, and defense expenses that is satisfactory in all respects to the City.

4.4.5 Notice of Reduction in Coverage. In the event that any coverage required by this section is reduced, limited, or materially affected in any other manner, Consultant shall provide written notice to City at Consultant's earliest possible opportunity and in no case later than five days after Consultant is notified of the change in coverage.

4.5 Remedies. In addition to any other remedies City may have if Consultant fails to provide or maintain any insurance policies or policy endorsements to the extent and within the time herein required, City may, at its sole option exercise any of the following remedies, which are alternatives to other remedies City may have and are not the exclusive remedy for Consultant's breach:

- Obtain such insurance and deduct and retain the amount of the premiums for such insurance from any sums due under the Agreement;
- Order Consultant to stop work under this Agreement or withhold any payment that becomes due to Consultant hereunder, or both stop work and withhold any payment, until Consultant demonstrates compliance with the requirements hereof; and/or
- Declare Consultant in material breach of the Agreement and terminate the Agreement.

4.6 Waiver. The Risk Manager of the City has the authority to waive or vary any provision of Sections 4.2 through 4.5. Any such waiver or variation shall not be effective unless made in writing.

Section 5. INDEMNIFICATION AND CONSULTANT'S RESPONSIBILITIES. Consultant shall indemnify, defend with counsel reasonably acceptable to the City, and hold harmless the City and its officials, officers, employees, agents, contractors, consultants, and volunteers from and against any and all losses, liability, claims, suits, actions, damages, and causes of action arising out of any personal injury, bodily injury, loss of life, or damage to property, or any violation of any federal, state, or municipal law or ordinance, to the extent caused, in whole or in part, by the willful misconduct or negligent acts or omissions of Consultant or its employees, subcontractors, or agents, by acts for which they could be held strictly liable, or by the quality or character of their

work. The foregoing obligation of Consultant shall not apply when (1) the injury, loss of life, damage to property, or violation of law arises wholly from the negligence or willful misconduct of the City or its officers, employees, agents, contractors, consultants, or volunteers and (2) the actions of Consultant or its employees, subcontractor, or agents have contributed in no part to the injury, loss of life, damage to property, or violation of law. It is understood that the duty of Consultant to indemnify and hold harmless includes the duty to defend as set forth in Section 2778 of the California Civil Code. Acceptance by City of insurance certificates and endorsements required under this Agreement does not relieve Consultant from liability under this indemnification and hold harmless clause. This indemnification and hold harmless clause shall apply to any damages or claims for damages whether or not such insurance policies shall have been determined to apply. By execution of this Agreement, Consultant acknowledges and agrees to the provisions of this Section and that it is a material element of consideration.

In the event that Consultant or any employee, agent, or subcontractor of Consultant providing services under this Agreement is determined by a court of competent jurisdiction or the California Public Employees Retirement System (PERS) to be eligible for enrollment in PERS as an employee of City, Consultant shall indemnify, defend, and hold harmless City for the payment of any employee and/or employer contributions for PERS benefits on behalf of Consultant or its employees, agents, or subcontractors, as well as for the payment of any penalties and interest on such contributions, which would otherwise be the responsibility of City.

Section 6. STATUS OF CONSULTANT.

- 6.1 Independent Contractor.** At all times during the term of this Agreement, Consultant shall be an independent contractor and shall not be an employee of City. City shall have the right to control Consultant only insofar as the results of Consultant's services rendered pursuant to this Agreement and assignment of personnel pursuant to Subparagraph 1.3. Otherwise, City shall not have the right to control the means by which Consultant accomplishes services rendered pursuant to this Agreement. Notwithstanding any other City, state, or federal policy, rule, regulation, law, or ordinance to the contrary, Consultant and any of its employees, agents, and subcontractors providing services under this Agreement shall not qualify for or become entitled to, and hereby agree to waive any and all claims to, any compensation, benefit, or any incident of employment by City, including but not limited to eligibility to enroll in the California Public Employees Retirement System (PERS) as an employee of City and entitlement to any contribution to be paid by City for employer contributions and/or employee contributions for PERS benefits.
- 6.2 Consultant No Agent.** Except as City may specify in writing, Consultant shall have no authority, express or implied, to act on behalf of City in any capacity whatsoever as an agent. Consultant shall have no authority, express or implied, pursuant to this Agreement to bind City to any obligation whatsoever.

Section 7. LEGAL REQUIREMENTS.

- 7.1 **Governing Law.** The laws of the State of California shall govern this Agreement.
- 7.2 **Compliance with Applicable Laws.** Consultant and any subcontractors shall comply with all laws applicable to the performance of the work hereunder.
- 7.3 **Other Governmental Regulations.** To the extent that this Agreement may be funded by fiscal assistance from another governmental entity, Consultant and any subcontractors shall comply with all applicable rules and regulations to which City is bound by the terms of such fiscal assistance program.
- 7.4 **Licenses and Permits.** Consultant represents and warrants to City that Consultant and its employees, agents, and any subcontractors have all licenses, permits, qualifications, and approvals of whatsoever nature that are legally required to practice their respective professions. Consultant represents and warrants to City that Consultant and its employees, agents, any subcontractors shall, at their sole cost and expense, keep in effect at all times during the term of this Agreement any licenses, permits, and approvals that are legally required to practice their respective professions and to perform this Agreement. In addition to the foregoing, Consultant and any subcontractors shall obtain and maintain during the term of this Agreement valid business license from City.
- 7.5 **Nondiscrimination and Equal Opportunity.** Consultant shall not discriminate, on the basis of a person's race, religion, color, national origin, age, physical or mental handicap or disability, medical condition, marital status, sex, or sexual orientation, against any employee, applicant for employment, subcontractor, bidder for a subcontract, or participant in, recipient of, or applicant for any services or programs provided by Consultant under this Agreement. Consultant shall comply with all applicable federal, state, and local laws, policies, rules, and requirements related to equal opportunity and nondiscrimination in employment, contracting, and the provision of any services that are the subject of this Agreement, including but not limited to the satisfaction of any positive obligations required of Consultant thereby.

Consultant shall include the provisions of this Subsection in any subcontract approved by the City or this Agreement.

Section 8. TERMINATION AND MODIFICATION.

- 8.1 **Termination.** City may terminate this Agreement at any time and without cause upon written notification to Consultant.

In the event of termination, Consultant shall be entitled to compensation for services performed prior to the effective date of termination as provided in Section 2. City, however, may condition payment of such compensation upon Consultant

delivering to City any or all documents, photographs, computer software, video and audio tapes, and other materials provided to Consultant or prepared by or for Consultant or the City in connection with this Agreement.

- 8.2 **Extension.** City may, in its sole and exclusive discretion, extend the end date of this Agreement beyond that provided for in Subsection 1.1. Any such extension shall be specified in writing by the City. Consultant understands and agrees that, if City issues such an extension, City shall have no obligation to provide Consultant with compensation beyond the maximum amount provided for in this Agreement. Similarly, unless authorized by the City, City shall have no obligation to reimburse Consultant for any otherwise reimbursable expenses incurred during the extension period.
- 8.3 **Amendments.** The parties may amend this Agreement only by a writing signed by all the parties.
- 8.4 **Assignment and Subcontracting.** City and Consultant recognize and agree that this Agreement contemplates personal performance by Consultant and is based upon a determination of Consultant's unique personal competence, experience, and specialized personal knowledge. Moreover, a substantial inducement to City for entering into this Agreement was and is the professional reputation and competence of Consultant. Consultant may not assign this Agreement or any interest therein without the prior written approval of the City. Consultant shall not subcontract any portion of the performance contemplated and provided for herein, other than to the subcontractors listed in the Consultant's proposal, without prior written approval of the City.
- 8.5 **Survival.** All obligations arising prior to the termination of this Agreement and all provisions of this Agreement allocating liability between City and Consultant shall survive the termination of this Agreement.
- 8.6 **Options upon Breach by Consultant.** If Consultant materially breaches any of the terms of this Agreement, City's remedies shall include, but not be limited to, any or all of the following:
- 8.6.1 Immediate cancellation of the Agreement;
 - 8.6.2 Retention of the plans, specifications, drawings, reports, design documents, and any other work product prepared by Consultant pursuant to this Agreement prior to cancellation; and
 - 8.6.3 Retention of a different consultant at Consultant's cost to complete the work described in Exhibit A not finished by Consultant.

Section 9. KEEPING AND STATUS OF RECORDS.

9.1 Records Created as Part of Consultant's Performance. All reports, data, maps, models, charts, studies, surveys, calculations, photographs, memoranda, plans, studies, specifications, records, files, or any other documents or materials, in electronic or any other form, that Consultant prepares or obtains pursuant to this Agreement and that relate to the matters covered hereunder shall be the property of the City. Consultant hereby agrees to deliver those documents to the City at any time upon demand of the City. It is understood and agreed that the documents and other materials, including but not limited to those described above, prepared pursuant to this Agreement are prepared specifically for the City and are not necessarily suitable for any future or other use. Failure by Consultant to deliver these documents to the City within the time period specified by the City shall be a material breach of this Agreement. City and Consultant agree that, until final approval by City, all data, plans, specifications, reports and other documents are preliminary drafts not kept by the City in the ordinary course of business and will not be disclosed to third parties without prior written consent of both parties. All work product submitted to the City pursuant to this Agreement shall be deemed a "work for hire". Upon submission of any work for hire pursuant to this Agreement, and acceptance by the City as complete, non-exclusive title to copyright of said work for hire shall transfer to the City. The compensation recited in Exhibit B shall be deemed to be sufficient consideration for said transfer of copyright.

9.2 Consultant's Books and Records. Consultant shall maintain any and all ledgers, books of account, invoices, vouchers, canceled checks, and other records or documents evidencing or relating to charges for services or expenditures and disbursements charged to the City under this Agreement for a minimum of three (3) years, or for any longer period required by law, from the date of final payment to the Consultant to this Agreement.

9.3 Inspection and Audit of Records. Any records or documents that Section 9.2 of this Agreement requires Consultant to maintain shall be made available for inspection, audit, and/or copying at any time during regular business hours, upon oral or written request of the City. Under California Government Code Section 8546.7, if the amount of public funds expended under this Agreement exceeds TEN THOUSAND DOLLARS (\$10,000.00), the Agreement shall be subject to the examination and audit of the State Auditor, at the request of City or as part of any audit of the City, for a period of three (3) years after final payment under the Agreement.

Section 10 MISCELLANEOUS PROVISIONS.

10.1 Attorneys' Fees. If a party to this Agreement brings any action, including an action for declaratory relief, to enforce or interpret the provision of this Agreement, the prevailing party shall be entitled to reasonable attorneys' fees in addition to

any other relief to which that party may be entitled. The court may set such fees in the same action or in a separate action brought for that purpose.

- 10.2 **Venue.** In the event that either party brings any action against the other under this Agreement, the parties agree that trial of such action shall be vested exclusively in the state courts of California in the County of Santa Clara or in the United States District Court for the Northern District of California.
- 10.3 **Severability.** If a court of competent jurisdiction finds or rules that any provision of this Agreement is invalid, void, or unenforceable, the provisions of this Agreement not so adjudged shall remain in full force and effect. The invalidity in whole or in part of any provision of this Agreement shall not void or affect the validity of any other provision of this Agreement.
- 10.4 **No Implied Waiver of Breach.** The waiver of performance or any breach of a specific provision of this Agreement does not constitute a waiver of any other breach of that term or any other term of this Agreement.
- 10.5 **Successors and Assigns.** The provisions of this Agreement shall inure to the benefit of and shall apply to and bind the successors and assigns of the parties.
- 10.6 **Use of Recycled Products.** Consultant shall prepare and submit all reports, written studies and other printed material on recycled paper to the extent it is available at equal or less cost than virgin paper.
- 10.7 **Conflict of Interest.** Consultant may serve other clients, but none whose activities within the corporate limits of City or whose business, regardless of location, would place Consultant in a "conflict of interest," as that term is defined in the Political Reform Act, codified at California Government Code Section 81000 *et seq.*

Consultant shall not employ any City official in the work performed pursuant to this Agreement. No officer or employee of City shall have any financial interest in this Agreement that would violate California Government Code Sections 1090 *et seq.*

Consultant hereby warrants that it is not now, nor has it been in the previous twelve (12) months, an employee, agent, appointee, or official of the City. If Consultant were an employee, agent, appointee, or official of the City in the previous twelve months, Consultant warrants that it did not participate in any manner in the forming of this Agreement. Consultant understands that, if this Agreement is made in violation of Government Code §1090 *et seq.*, the entire Agreement is void and Consultant will not be entitled to any compensation for services performed pursuant to this Agreement, including reimbursement of expenses, and Consultant will be required to reimburse the City for any sums paid to the Consultant. Consultant understands that, in addition to the foregoing, it may

be subject to criminal prosecution for a violation of Government Code § 1090 and, if applicable, may be disqualified from holding public office in the State of California.

Consultant certifies that it has not paid any direct or contingent fee, contribution, donation or consideration of any kind to any firm, organization, or person (other than a bona fide employee of Consultant) in connection with procuring this Agreement, nor has Consultant agreed to employ or retain any firm, organization, or person in connection with the performance of this Agreement as a condition for obtaining this Agreement.

10.8 Solicitation. Consultant agrees not to solicit business at any meeting, focus group, or interview related to this Agreement, either orally or through any written materials.

10.9 Ownership of Documents. All documents developed or obtained by Consultant in the performance of the Agreement shall be deemed to be the property of the City.

10.10 Contract Administration. This Agreement shall be administered by James Lindsay, who is authorized to act for, and on behalf of City. All correspondence shall be directed to or through the Contract Administrator or his or her designee.

10.11 Notices. Any written notice to Consultant shall be sent to:
Lynette Dias, AICP, Principal,
LSA Associates, Inc.
2215 Fifth Street
Berkeley, CA 94710

Any written notice to City shall be sent to:
James Lindsay
455 East Calaveras Boulevard
Milpitas, California 95035
Attn.: Dennis Carrington

10.12 Professional Seal. Where applicable in the determination of the City, the first page of a technical report, first page of design specifications, and each page of construction drawings shall be stamped/sealed and signed by the licensed professional responsible for the report/design preparation.

10.13 Record Drawing. At the end of construction, the consultant shall prepare a record drawing using the red-lined plans to be provided by the City. The record drawing shall incorporate all changes made during construction in the field to show the actual record of construction.

- 10.14 Integration.** This Agreement, including the exhibits, represents the entire and integrated agreement between City and Consultant and supersedes all prior negotiations, representations, or agreements, either written or oral.
- 10.15 Exhibits.** All exhibits referenced in this Agreement are incorporated by reference herein.

CITY OF MILPITAS

CONSULTANT

Thomas J. Wilson, City Manager
ATTEST:

Lynette Dias, AICP
LSA Associates, Inc.

Gail Blalock, City Clerk

Taxpayer Identification Number

APPROVED AS TO FORM:

Steven T. Mattas, City Attorney

APPROVED AS TO CONTENT:

Department/Division Head

APPROVED:

Finance Director/Risk Manager

Attachments:

Exhibit A:	Scope of Services/Work Plan
Exhibit B:	Project Schedule and Budget
Exhibit C:	Insurance Coverage Documents

EXHIBIT "A"
SCOPE OF SERVICES/WORK PLAN;

by LSA Associates, Inc..

III. PROPOSED WORK PROGRAM

This chapter outlines our recommended work program for completing the environmental documentation for the Milpitas Senior Housing and Santa Clara County Health Center in compliance with the California Environmental Quality Act (CEQA). A summary of the work program is provided in Table 1. Our proposed work schedule and estimated budgeted are presented in Chapter IV.

TASK A. PROJECT INITIATION

Project initiation will involve meeting with City staff and the City's other partners for this project, conducting a field visit, gathering information, contacting responsible agencies, issuing a Notice of Preparation, holding a public scoping session and refining the work program. The project description and significance criteria for the EIR will also be prepared as part of project initiation subtasks.

1. Start-Up Meeting

LSA will meet with City staff and the project applicant to discuss expectations regarding the tasks to be undertaken as part of the environmental documentation effort for the Milpitas Senior Housing and Santa Clara County Health Center project. As part of these meetings, LSA will want to:

- Gather relevant information and data regarding the site and its environmental issues, including the City's General Plan, Zoning Ordinance, other relevant policies or regulations, and any historical information available for the existing buildings;
- Learn more about other development planned in the vicinity of the project site;
- Discuss the City's desired schedule for the planning process; and
- Review the anticipated entitlements/planning approvals and lead and responsible agency roles.

2. Site Visit

As one of the initial steps in this scope of work, LSA will undertake a site visit with as many members of our project team as possible. We will drive, walk through, and photograph the project area and its surroundings, to familiarize ourselves with the area, and document existing conditions and site features. We will encourage attendance by City staff and other project partners at our initial site visit to allow for sharing of observations. The site and its environs will be observed and photographed to document existing conditions.

3. Prepare Notice of Preparation

LSA will prepare a Notice of Preparation (NOP) for distribution by the City. A brief summary of the proposed project and a conceptual site plan (if available) and site location map will be prepared and included with the NOP. Depending upon the project schedule and input we received from the City, LSA may also prepare an Initial Study Checklist to include with the NOP. The Initial Study would detail what topics would be "focused" out of the EIR. Alternatively, we will prepare a one to two

page description of the topics that will be evaluated in the EIR and those that will just be briefly discussed under effects found not to be significant.

Following the 30-day review period, LSA will review any comments received on the NOP and make recommendations for any necessary scope and budget refinements.

4. Base Map Preparation

A base map of the project site and vicinity will be prepared by LSA. The project site base map will be used to illustrate street/highway and lot layouts in the project site vicinity, the project site's relationship to surrounding blocks, surrounding land uses, and General Plan and Zoning designations. The base map will also be available to the City for use during meetings and presentations.

5. Data Gathering and Evaluation

Existing data and analyses applicable to the project site and vicinity will be collected and evaluated, including, but not limited to, the following documents:

- *General Plan*
- *Zoning Ordinance*
- *General Plan EIR (if available)*
- *Midtown Milpitas Specific Plan and EIR*
- *Other appropriate and relevant City planning documents*

LSA will contact responsible or potentially affected agencies to identify concerns about the proposed project for those environmental topics on which the EIR will focus. Excluding City departments, these agencies could include: the Bay Area Air Quality Management District; Regional Water Quality Control Board; Caltrans; the Santa Clara Valley Transportation Authority (VTA); the Santa Clara Valley Water District; and the San Clara County Health Department. LSA will also contact organizations that may have an interest in the historic significance of the property, including the Native American Commission and the Milpitas Historical Society.

Table 1: Work Program Outline

TASK A. PROJECT INITIATION <ol style="list-style-type: none">1. Start-Up Meeting2. Site Visit3. Prepare Notice of Preparation4. Base Map Preparation5. Data Gathering and Evaluation6. Scoping Session7. Significance Criteria8. Work Program Refinement
TASK B. SETTING, IMPACTS, AND MITIGATION MEASURES <ol style="list-style-type: none">1. Land Use and Planning Policy2. Population and Housing3. Transportation, Circulation and Parking4. Air Quality5. Noise6. Hydrology and Water Quality7. Hazardous Materials and Public Health and Safety8. Cultural and Paleontological Resource9. Aesthetic Resources
TASK C. CUMULATIVE AND GROWTH INDUCING IMPACTS
TASK D. ALTERNATIVES
TASK E. CEQA-REQUIRED ASSESSMENT CONCLUSIONS
TASK F. DRAFT ENVIRONMENTAL IMPACT REPORT <ol style="list-style-type: none">1. Administrative Draft EIR2. Screencheck Draft EIR3. Draft EIR
TASK G. RESPONSES TO COMMENTS DOCUMENT <ol style="list-style-type: none">1. Administrative Draft RTC Document2. Screencheck RTC Document3. Final RTC Document
TASK H. MITIGATION MONITORING AND REPORTING PROGRAM
TASK I. PROJECT MANAGEMENT
TASK J. MEETINGS

6. Scoping Session

At the City's request, LSA will participate in one public scoping session. Lynette Dias and Amy Paulsen will attend the session and describe the environmental review process for those in attendance. LSA will summarize key environmental issues and outline the expected schedule for the EIR's preparation and the public's involvement. After the meeting, LSA will review all verbal and written comments received on the Notice of Preparation.

7. Prepare Project Description

LSA will work with the City and its project partners to prepare a project description that describes the purpose, phasing and physical elements of the proposed project. The project description will include a map showing the location and boundaries of the project area and a general description of the project's technical and environmental characteristics. LSA will work closely with the City and its project partners to ensure that the project description provides a level of detail appropriate for the EIR. As a part of the project description, LSA will work with the project team to prepare a list of project objectives.

The project description will also include a statement briefly describing the intended uses of the EIR, including a list of agencies expected to use the EIR, a list of permits and other approvals required to implement the project and a list of related environmental review and consultation requirements required by federal, State or local laws, regulations and policies.

A draft of the project description will be submitted to the City and each project partner for review and acceptance before the LSA team begins conducting any impact analyses.

8. Significance Criteria

LSA will develop a list of significance criteria for use in the EIR based on information obtained from the City including the City General Plan and significance criteria that has been utilized in other city EIRs (including the Midtown Specific Plan EIR). A draft list of significant criteria will be submitted to City staff and its project partners (if appropriate) for review and acceptance prior to undertaking any impact analysis.

9. Work Program Refinement

LSA understands that the proposed project is in the early stages of being developed and has not yet been fully defined. Once the project applications are formalized and the scoping and NOP process are complete, it may be necessary to refine this work program. LSA will work with City staff to refine the EIR scope and budget to ensure it adequately addresses the refined version of the project and any additional valid concerns raised in comments received on the NOP, and at the scoping session.

TASK B. SETTING, IMPACTS, AND MITIGATION MEASURES

The setting, impacts, and mitigation measures documentation for each of the issue areas described below will be incorporated into the EIR. We will use information available in the Midtown Specific Plan EIR to the extent it is still current and applicable to the specific project being considered.

LSA will begin the preparation of the setting section for each environmental topic while the project description is being finalized. The setting section for each topic will describe the current conditions of the site. Following the availability of a complete project description, LSA will conduct an impact analysis for each environmental topic. Each impact analysis will evaluate project-level impacts of the project tiering off of the program-level analyses included in the Midtown Specific Plan EIR. Where relevant, impacts will be separately identified in terms of whether they would occur during the construction or operations periods.

Environmental topics we have included are based on our initial understanding of the project and what could be adequately covered by the Midtown Specific Plan EIR. Upon completion of Task A, Project Initiation, and development of the final project description, it may be determined that additional environmental topics could be focused out or that some topics may necessitate analysis of a greater breadth or depth than originally proposed. Topics that are not anticipated to necessitate evaluation in this EIR include: geology, soils and seismicity; utilities; public services; biological resources; agricultural resources; mineral resources; and recreation. If this is the case, LSA will work with City staff to refine our proposed work program, as appropriate (see Task A.8 above). Issues found not to be potentially significant as part of Task A will be documented in the CEQA Conclusions chapter of the EIR (see Task E below) and will not be addressed in Setting, Impacts and Mitigation Measures.

1. Land Use and Planning Policy

The Land Use and Planning Policy analysis will focus on the project's relationship to local land use patterns and relevant planning policy. The section will also include a brief discussion of existing and planned land uses in the project vicinity.

- **Compile, identify, and present existing land uses.** Existing on-site and surrounding land uses (extending approximately ¼ mile outside the project site boundaries) will be described and mapped. Potential projects planned in the foreseeable future in the vicinity of the project site will also be described as part of this task.
- **Describe relevant policies and regulations.** LSA will summarize relevant land use plans and policies. Documents that LSA will refer to include the existing City General Plan; City Zoning Ordinance; Midtown Milpitas Specific Plan; and other applicable local, regional, State, and federal plans and policies. Policies that are applicable to other topical subsections of the EIR (e.g., traffic) will be cross-referenced.
- **Evaluate land use compatibility.** The compatibility of the proposed project's land uses with existing and planned area land uses will be evaluated and described. Compatibility between land uses proposed within the study area will also be evaluated.
- **Assess potential secondary land use impacts.** Potential secondary land use impacts, such as increased traffic and stormwater from the proposed project, will be described through reference to other sections of the EIR.
- **Determine policy consistency.** The project's compatibility with applicable policies will be evaluated.

If necessary, mitigation measures will be recommended to reduce significant land use impacts to less-than-significant levels. Since policy inconsistencies in and of themselves are not considered to be significant, mitigation measures will not be recommended to address policy inconsistencies not associated with physical impacts. If it's the City's desire, LSA will recommend project changes

(separate from mitigation measures) that could be implemented to reconcile any potential policy inconsistencies.

2. Population and Housing

The Population and Housing section will document the area's existing population, employment, and housing characteristics in both a local (City of Milpitas) and regional (San Francisco Bay Area) context based upon available demographic and survey data. LSA will assess the new population and housing impacts that would result from buildout of the proposed project.

- ***Describe existing conditions.*** LSA will describe existing conditions in the City and region based on 2000 U.S. Census data and the most recent Association of Bay Area Governments (ABAG) projections. LSA will document the existing population within the project site based upon a field survey and information supplied by the City or project applicant.
- ***Describe existing policies and regulations.*** LSA will summarize relevant plans and policies related to population and housing in the City.
- ***Identify population, employment, and housing impacts.*** LSA will assess the population and housing impacts that would be created by the proposed project relative to the City's General Plan and ABAG's projections for population and allocation of housing needs. Specific subtopics to be addressed include:
 - population growth;
 - job generation and economic development;
 - comparison of potential job generation with potential new housing; and
 - displacement or relocation of existing residents or businesses.

All potential impacts will be evaluated in relation to existing city-wide population, employment, and housing figures. Appropriate mitigation measures, if necessary, will be recommended to reduce any significant population and housing impacts to less-than-significant levels.

3. Transportation, Circulation and Parking

The technical transportation and circulation analysis for the EIR will be prepared by Fehr & Peers Associates, Inc. A detailed scope of work for Fehr & Peers is provided in Attachment A of this proposal. We have included time in our proposed budget to oversee the preparation of the analysis, review the traffic-related work products, and incorporate the findings of the study into the EIR.

4. Air Quality

LSA will prepare a technical air quality analysis for inclusion in the EIR, consistent with all applicable procedures and requirements. This air quality analysis will address local and regional impacts on sensitive land uses. The project site is located in the San Francisco Bay Area Air Basin. The air quality issues specific to the City of Milpitas area, Santa Clara County and San Francisco Bay Area Air Quality Management District (BAAQMD) air quality planning programs and procedures included in the *BAAQMD CEQA Guidelines* will be evaluated. LSA will prepare a technical air quality analysis consistent with all applicable procedures and requirements, including the following tasks:

- ***Describe existing conditions.*** Baseline and project setting meteorological and air quality data developed through the California Air Resources Board (ARB) and climatological and air quality profile data gathered by the BAAQMD will be utilized for the description of existing ambient air

quality. Most recent published air quality data from the San Jose air quality monitoring station for the past three years will be included to help highlight existing air quality in the vicinity of the project site. Other sources, such as regulatory documents, professional publications, and past LSA experience in the project area will supplement background information.

- **Evaluate construction-period impacts.** Based on BAAQMD guidelines, quantification of construction emissions is not required. Standard dust suppression measures will be identified to minimize construction impacts.
- **Evaluate increased emissions.** The proposed project has the potential to generate new vehicular trips to and from the project site. Emissions associated with long-term operations from vehicle trips will be calculated with the ARB's URBEMIS 2002 model. Project trip generation and other data included in the traffic study will be used. In addition, emissions associated with stationary sources, such as on-site energy consumption, will be estimated with the URBEMIS 2002 model.
- **Conduct carbon monoxide analysis.** A local carbon monoxide (CO) hot spot analysis will be conducted at up to eight intersections most affected by project-related traffic, using the CALINE4 model and using peak hour turn volumes and other data from the traffic study.

LSA will work with the BAAQMD and the City of Milpitas, if necessary, to identify feasible mitigation measures. Mitigation measures will be developed as indicated by the impact analysis.

5. Noise

LSA will prepare a technical noise analysis for inclusion in the EIR that will identify the impacts on sensitive land uses. The analysis will include the following tasks.

- **Identify regulatory environment.** Applicable State of California and City of Milpitas noise and land use compatibility criteria will be identified.
- **Describe existing conditions.** Noise monitoring is assumed not to be required. However, additional budget may be required for ambient noise monitoring, if found to be necessary.
- **Evaluate construction-period noise impacts.** Noise impacts during demolition and construction will be analyzed based on the available project-specific construction information provided to LSA. Environmental Protection Agency (EPA) recommended noise emission levels will be used to evaluate noise generated by construction equipment. The construction noise impact will be evaluated in terms of maximum levels (L_{max}) and/or hourly equivalent continuous noise levels (L_{eq}) and their frequency of occurrence. Analysis requirements will be based on the sensitivity of the project site and City of Milpitas noise ordinance specifications.
- **Evaluate operation-period noise impacts.** Noise impacts from project specific and cumulative vehicular traffic trips will be assessed using the U.S. Federal Highway Traffic Noise Prediction Model (FHWA-RD-77-108, December 1978). Model input data include average daily traffic levels, day/night percentages of autos, medium and heavy trucks, vehicle speeds, ground attenuation factors, and roadway widths (to be provided by traffic consultant for the proposed project). The future Community Noise Equivalent Level (CNEL) along selected roadway segments, based on the traffic study prepared for the project, will be provided in a table format to show the distance/contour relationship. Noise impacts on sensitive land uses from traffic will be assessed. Noise impacts from project-related stationary sources, generated by the proposed ground floor commercial uses, will be assessed qualitatively for potential noise impacts on adjacent noise sensitive uses.

Mitigation measures designed to reduce short- and long-term impacts to acceptable noise levels will be identified where necessary. Both an evaluation of the potential mitigation measures and a discussion of their effectiveness will be provided.

6. Hydrology and Water Quality

Construction of the proposed project would disturb current surface cover and expose soils to erosion and off-site sedimentation. In addition, the completed project, if not properly designed and constructed, would be expected to contribute additional urban pollutants to runoff and receiving waters. Based on preliminary review, it appears that a portion of the project site is located within the FEMA-mapped 100-year flood hazard zone. In preparation of the setting section for this EIR, Mr. Bruce Abelli-Amen, Certified Hydrogeologist with Baseline will rely on the previously completed analyses, supplemented, as needed, with available site-specific technical reports and a site reconnaissance. Mr. Abelli-Amen will complete the following tasks to prepare the setting section:

- **Describe hydrologic conditions.** Describe the regional and site-specific hydrologic and storm drainage conditions for the vicinity of the project site, including FEMA flood zones and personal accounts of localized flooding, if any.
- **Conduct a site reconnaissance.** A reconnaissance will be conducted to verify drainage patterns and identify opportunity areas for construction of treatment control Best Management Practices (BMPs) to improve runoff water quality from the site.
- **Describe existing water quality conditions.** Based on existing reports, the surface and groundwater quality in the vicinity of the site will be described. In addition, water quality-related observations made during the site reconnaissance will be summarized.

Based on preliminary review of the site location, anticipated impacts relating to hydrology and storm drainage will include flooding, an increase in impervious surfaces resulting in an increase in runoff volume, and degradation of runoff water quality (during and after construction).

- **Evaluate flood hazards.** The project proposes to place new construction in a designated flood hazard area. The potential impacts to users of the site and the finished development would be described. It is probable that compliance with City building ordinances and the National Flood Insurance Program guidelines would adequately mitigate this potential impact.
- **Evaluate increase in runoff volume.** Construction of buildings and roads would increase impervious areas and may increase runoff volume from the site. Existing drainage features may be inadequate to handle the increased volume, resulting in erosion or localized flooding.
- **Describe potential degradation of water quality.** The proposed project would introduce new sources of water quality degradation, including urban pollutants (petroleum hydrocarbons and heavy metals for automobile use) and agricultural or landscaping-related pollutants (fertilizers and pesticides used on the common landscaped areas). These pollutants may be introduced to creeks and the storm sewer which eventually drains to the Bay.

Baseline will identify practical mitigation measures that would reduce or eliminate any identified potential impacts related to hydrology and storm drainage.

7. Hazardous Materials and Public Health and Safety

The project includes construction of 100 independent living senior units and a county health care facility. Future users of the site would include senior citizens and the infirm, populations that are considered "sensitive receptors" because they may be more susceptible to health effects from hazardous materials than the general public.

The hazardous materials analysis performed for the Midtown Milpitas Specific Plan EIR identified several reported hazardous materials releases near the project site, including releases of gasoline affecting groundwater from the Milpitas Senior Center (160 N. Main Street) and a former corporation yard (116 N. Main Street). These cases were reported as active at the time of preparation of the Specific Plan EIR, indicating that investigation and remediation of these sites had not yet been completed. If hazardous materials releases at or near the project site have affected soil or groundwater at the project site, development of the project could result present health risks to future construction workers, residents, and patients at the project site.

The analysis of potential hazardous materials and public health and safety impacts will be completed by Todd Taylor, Registered Environmental Assessor with Baseline. The following tasks would be performed:

- **Evaluate historical land use information.** Historical land use information, including historic aerial photographs, historic maps, and other available information, will be reviewed to determine previous land uses at the project site and adjacent properties from the time these historical resources were available. Any historical land uses associated with hazardous materials that may have the potential to affect the project site would be identified.
- **Review regulatory agency information and previous environmental investigations.** Regulatory agency database reports to identify reported releases of hazardous materials at and near the site that could potentially affect development of the project will be reviewed. Available environmental investigations for reported hazardous materials sites at and near the proposed project will also be reviewed. We anticipate that a review of case files from the Santa Clara Valley Water District will be required for this task.
- **Describe regulatory framework and applicable plans and policies.** The regulatory framework for hazardous materials and public health and safety, including federal, State, and local agencies, laws, and regulations will be described. This task will include description of policies from the Milpitas General Plan, the Midtown Milpitas Specific Plan, and mitigation measures from the Midtown Milpitas Specific Plan EIR.
- **Assess impacts.** Using data collected for the above tasks, potential significant impacts of the project related to public health and safety will be analyzed. Potential public health and safety impacts will be described and quantified, as appropriate.

Practical mitigation measures will be developed to address any identified significant impacts to public health and safety. Mitigation measures to address health risks from hazardous material contamination could potentially include a soil and groundwater investigation, remedial activities, and/or administrative and engineering controls for project development. Should an environmental investigation of the project site be warranted, specific performance standards for the investigation and future risk evaluations of the project will be included in the mitigation measure.

Optional Task: Prepare Phase I Environmental Site Assessment. Mitigation Measure HazMat-1 of the Midtown Milpitas Specific Plan EIR specifies that a Phase I Environmental Site Assessment shall be prepared for any proposed development in the Specific Plan Area involving soil disturbance near identified hazardous materials release sites. Should the County desire, Baseline would prepare a standalone Phase I report for the project site in accordance with this mitigation measure and ASTM Standard E 1527-00, "Standard Practice for Environmental Site Assessments: Phase I Environmental Site Assessment Process." The Phase I assessment would rely on the research collected for the hazardous materials and public health and safety analysis for the DEIR, supplemented by a field reconnaissance, interviews with persons familiar with the site, and additional research into regulatory release information, as prescribed in the ASTM Standard.

8. Cultural and Paleontological Resources

LSA will conduct background research, consult with potentially-interested parties, conduct a project area field survey, and prepare a report that will be used to prepare the cultural and paleontological resources section of the EIR.

The cultural resources study will be conducted in accordance with CEQA, the California Register of Historical Resources, and the requirements of the City of Milpitas Cultural Resources Preservation Program, and the Specific Plan Community Design Element. LSA will complete the following tasks to: (1) identify previously recorded cultural resources and previous cultural resource studies within or adjacent to the study area; (2) assess the likelihood that unrecorded cultural resources are present within the study area; and (3) prepare the cultural settings portion of the report.

- Conduct a records search of documents on file at the Northwest Information Center (NWIC) of the California Historical Resources Information System and review relevant publications and maps on file at LSA.
- Conduct research, as necessary, at the City of Milpitas Library and other information repositories.
- Review the State of California Department of Parks and Recreation and Office of Historic Preservation inventories for any cultural resources that may be listed within or adjacent to the study area. The City of Milpitas *Register of Cultural Resources* will also be reviewed.
- Request the Native American Heritage Commission in Sacramento to review the sacred lands files to determine if the study area contains any listed sites.
- Contact the City of Milpitas Parks, Recreation, and Cultural Resources Commission, and the Milpitas historical society to discuss any information or concerns they may have relevant to the project.
- Conduct a field study that will consist of an on-foot survey of the entire study area.

It is assumed that the only cultural resource in the project area is the DeVries/Smith Home and that the previous recording of the house will need to be updated on State of California Department of Parks and Recreation DPR 523 forms. The forms will be submitted to the NWIC for assignment of an official State of California designation. Additional cultural resources, if identified, will require (1) recording which includes mapping, photographing, and completion of DPR 523 forms, and (2) discussion in the technical report and EIR. Should cultural resources be identified that require recording, a scope and budget augment would be necessary consistent with the number of resources identified.

Paleontological Resources Archival and Field Study

The paleontological study will be conducted in accordance with the California Environmental Quality Act and the Society for Vertebrate Paleontology Guidelines. LSA will complete the following sub-tasks:

- Conduct a paleontological records review and literature search of the study area and a 1-mile radius. A locality search will be conducted at the University of California Museum of Paleontology, Berkeley, to obtain information about the study area. A review of paleontological literature will also be done.
- Conduct an on-foot field survey of the study area to identify any fossil resources that may be present. It is assumed that no fossil localities will be identified. Fossil localities, if identified, will require (1) recording which includes mapping, photographing, and completion of fossil locality forms, and (2) discussion in the technical report and EIR. Should fossil localities be identified that require recording, a scope and budget augment would be necessary consistent with the number of resources identified.

NOTE: Accuracy of cultural and paleontological resources field survey is largely dependent upon ground visibility. During a survey, ground visibility can range from 0 to 100 percent, depending upon the vegetation cover, time of year, and cultural modifications. Cultural and paleontological resources not identified during the field survey may be discovered during construction.

Report

LSA will prepare a cultural and paleontological resources study report guided by the Office of Historic Preservation's *Archaeological Resource Management Reports (ARMR): Recommended Contents and Format* and the Society for Vertebrate Paleontology guidelines. The report will describe the cultural and paleontological setting, background research, study methods, research and field findings, provide a preliminary evaluation of any resources, provide management recommendations (including evaluation, avoidance, and mitigation recommendations), and, as appropriate, will include a confidential appendix containing the cultural resource record and fossil locality forms.

The final report will be submitted to the NWIC in fulfillment of a requirement to access their archives.

EIR Preparation

Based on the cultural and paleontological resources technical report, a Cultural Resources Section, which will include the findings of the paleontological study, will be prepared for inclusion in the project EIR. The section will identify potential project-related impacts to cultural and paleontological resources and recommend mitigation to avoid, reduce, or minimize, such impacts to less-than-significant levels.

9. Aesthetic Resources

The site's existing appearance will be altered by the introduction of new development on the project site. The aesthetic resources analysis will address the visual effects associated with the effects of new development and landscaping at the site.

LSA will complete the following tasks to document and describe the visual setting of the project site and its environs:

- ***Describe the area's existing visual character.*** LSA will describe the area's existing visual character using photographs and narrative, and will include views from and to the site. The site's visibility as seen from key public vantage points located within the vicinity of the project site will also be described.
- ***Summarize relevant General Plan and Specific Plan policies and other applicable regulations.*** A summary of policies and regulations regarding visual resources will be provided.

LSA will prepare a systematic and objective assessment of the potential visual effects associated with the proposed project based on a site reconnaissance and review of ground level and aerial photographs, topographic data, and the applicant's project drawings. The impact analysis will include the following tasks:

- ***Analyze and describe the potential impacts.*** Effects of the proposed development on the existing visual character of the site and its surroundings will be described and analyzed. We will address the project's potential visibility and visual contrast and compatibility as seen from key public view corridors and sensitive viewing locations. Cumulative visual effects will also be evaluated.
- ***Analyze potential light and glare impacts.*** The potential impacts associated with new sources of night lighting that may result from new development will be considered.

LSA will discuss components of the proposed project, such as open space, internal landscaping and landscaped setback buffers that are designed to reduce visual impacts associated with the proposed development. As appropriate, additional or alternative measures will be identified, such as reconfigured building massing, articulation of building facades or other architectural treatment, and alternative site design to avoid or reduce any potential significant effects.

TASK C. CUMULATIVE AND GROWTH INDUCING IMPACTS

Section 15130 of the *CEQA Guidelines* requires that an EIR evaluate potential environmental impacts that are individually limited but cumulatively significant. These impacts can result from the proposed project alone or together with other projects. The analysis of cumulative effects will address the potential impacts associated with the proposed project in conjunction with other off-site, permitted, under-construction, or probable future projects. Mitigation measures will be developed to mitigate the project's contribution to significant cumulative effects.

The potential growth-inducing impacts of the proposed project will also be evaluated. CEQA considers a project to be growth-inducing if it would foster economic or population growth. Examples of projects that typically would have growth-inducing impacts include extensions or expansions of infrastructure beyond that needed to serve project-specific demand, and development of industrial parks in undeveloped or sparsely developed areas. Although significant growth-inducing impacts are not anticipated, potential impacts will be evaluated to adequately describe the nature of the project in relation to existing and proposed development.

TASK D. ALTERNATIVES

The alternatives chapter of the EIR for the proposed project will begin by describing the CEQA requirements for evaluation of alternatives. The LSA team will evaluate up to three alternatives for

the project, one of which will be the CEQA-required "No Project Alternative." LSA will describe each alternative and provide an analysis of the potential impacts related to each environmental topic addressed in this EIR relative to the proposed project. According to the *CEQA Guidelines*, alternatives can be evaluated in less detail than the proposed project. The discussion provided will be of sufficient detail to evaluate the benefits and drawbacks of each alternative and provide qualitative conclusions regarding the alternatives compared to the proposed project. Based on this analysis, the Environmentally-Superior Alternative will be identified, as required by CEQA.

TASK E. CEQA-REQUIRED ASSESSMENT CONCLUSIONS

LSA will prepare the appropriate conclusions to fulfill CEQA requirements by providing assessment of several mandatory impact categories including:

- Unavoidable significant environmental impacts;
- Significant irreversible environmental changes that would be caused by the proposed project, if it is implemented;
- Relationship between short-term and long-term uses of the environment; and
- Effects found not to be significant.

TASK F. DRAFT ENVIRONMENTAL IMPACT REPORT

1. Administrative Draft EIR

The information developed in Tasks A through E will be refined and organized into an Administrative Draft EIR. The EIR is expected to include the following components:

- Table of Contents
- Introduction
- Executive Summary and Impacts and Mitigation Measures Summary Table
- Project Description
- Environmental Setting, Impact Analysis, and Mitigation Measures
- Project Alternatives
- Cumulative and Growth-Inducing Impacts
- CEQA-Required Assessment Conclusions
- List of Persons and Organizations Contacted
- Bibliography
- Technical Appendices (as needed)

Fifteen (15) copies of the Administrative Draft EIR will be submitted to the City for review and comment. At the end of the review period, LSA will meet to discuss comments on the Administrative Draft.

2. Screencheck Draft EIR

LSA will amend the Administrative Draft EIR based on a single set of consolidated non-contradictory comments received from the City.

Three (3) copies of the Screencheck Draft EIR will be provided to the City to verify that all requested changes have been made and all appendix materials, references, and final graphics are acceptable.

3. Draft EIR

Fifty (50) copies of the Draft EIR will be produced for public distribution and submittal to the State Clearinghouse. LSA will prepare a Notice of Completion, in accordance with the *CEQA Guidelines*, and coordinate with the City to distribute the Draft EIR pursuant to CEQA and City review procedures. One CD-ROM will be delivered to the City containing all digital files of the Draft EIR in MS Word and PDF format.

TASK G. RESPONSES TO COMMENTS DOCUMENT

LSA will prepare the Responses to Comments document on the project following the public review period.

1. Administrative Draft Responses to Comments Document

The LSA team will formulate responses to comments on the Draft EIR, including written comments received from the public and agencies, and prepare a Responses to Comments document. Included in the Administrative Draft Responses to Comments document will be: (1) any necessary revisions to the Draft EIR; (2) written comments and any verbal comments received at a public hearing; (3) a list of persons, organizations, and public agencies commenting on the Draft EIR; (4) copies of all written comments, and the responses to these comments. LSA will discuss the best approach to the responses with the City at a meeting following the close of the comment period. The budget estimate in Table 3 shows the level of professional effort assumed for this task. Should an unexpectedly large volume of comments be submitted, LSA may request an adjustment in the budget to cover work beyond the assumed level.

Fifteen (15) copies of the Administrative Draft Responses to Comments document will be submitted to the City for review and comment. At the end of the review period, LSA will meet to discuss comments on the Administrative Draft.

2. Screencheck Responses to Comments Document

After review by the City and transmittal of a single set of consolidated non-contradictory comments, LSA will amend the Administrative Draft Responses to Comments document and prepare a Screencheck version for final review by City staff. We have allotted time for responding to changes; however, if this task were to exceed the cost allotted in the budget, LSA may request an adjustment in the budget to cover work beyond the assumed level. Three (3) copies of the Screencheck version will be provided to the City.

3. Final Responses to Comments Document

Upon completion of the Responses to Comments document, LSA will provide twenty-five (25) bound copies of the Responses to Comments document for public distribution and review. The document will include any necessary revisions to the Draft EIR and copies of comments on the Draft EIR received during the public comment period along with responses following each letter or transcript. One (1) camera-ready copy and one (1) CD-Rom containing all digital files of the Responses to Comments document in MS Word and PDF format copies will be submitted to the City.

TASK H. MITIGATION MONITORING AND REPORTING PROGRAM

LSA will prepare a Mitigation Monitoring and Reporting Program (MMRP) for this project and will identify responsibility for implementing and monitoring each mitigation measure, along with monitoring triggers and reporting frequency. LSA will also work closely with the City to ensure that the MMRP is prepared in a format that will be easy to implement and is tailored to the City's approval procedures. A checklist will be prepared listing these items and providing a column for verification of compliance. Monitoring will be dovetailed with existing processes of project design, development, and review.

The MMRP will be submitted to the City for review with the Administrative Draft Responses to Comments document. The Final MMRP will be included in the Final Responses to Comments document.

TASK I. PROJECT MANAGEMENT

Lynette Dias, and Amy Paulsen will undertake a variety of general project management tasks throughout the process of preparing the EIR and presenting it to decision-makers.

Ms. Dias will provide input on and monitor the scope, budget, and scheduling of the project. She will also ultimately be responsible for quality assurance for all work undertaken and will review all sub-consultant submittals and in-house prepared text, tables, and graphics before these materials are presented as administrative review documents. Ms. Dias will also be available for consultation on CEQA procedural matters, as well as application of the *CEQA Guidelines* to this project, and will attend meetings and public hearings with members of the project team.

The LSA management group (including Amy Paulsen, Assistant Planner) will coordinate the day-to-day activities associated with the project. Project management tasks include regular client contact; contract negotiation and management; oversight of subconsultants and team members; schedule coordination; and development of products. LSA will provide the direction to all team members that will ensure an internally-consistent, coherent document. Amy Paulsen will attend client meetings and public hearings, as appropriate.

TASK J. MEETINGS

Lynette Dias and Amy Paulsen will be available throughout the EIR preparation period to meet with the project team to gather information, review progress, arrive at a reasonable range of alternatives,

review preliminary findings, discuss staff comments, and offer input into discussions on project modifications. The cost estimate includes attendance by both Ms. Dias and Ms. Paulsen at eight meetings, including both staff meetings and public hearings. Attendance by LSA at additional meetings will be billed on a time-and-materials basis.

EXHIBIT "B"
PROJECT SCHEDULE AND BUDGET;

by LSA Associates, Inc..

IV. PROJECT SCHEDULE AND BUDGET

A. SCHEDULE

The preliminary work schedule for preparation and completion of the EIR is shown in Table 2 below. If necessary, we can work with the City to prepare a more expedited schedule. We will prepare a detailed schedule for preparation of the EIR with specific milestone dates once we receive a notice to proceed.

Table 2: Proposed EIR Schedule

Milestone	Responsible Party	Duration	Cumulative Weeks
Authorization to Proceed	City	B	B
Notice of Preparation Comment Period	--	30 Days	B
Scoping Meeting	City /LSA	1 day	B
Prepare Administrative Draft EIR	LSA	10 weeks	B
Review of Admin. Draft EIR	City	2 weeks	12 weeks
Prepare Screencheck Draft EIR	LSA	2 weeks	14 weeks
Review Screencheck Draft EIR	City	1 week	15 weeks
Prepare and Reproduce Draft EIR	LSA	1 week	16 weeks
Public Review Period	--	45 days	22.5 weeks
Public Hearing on Draft EIR	LSA/ City	1 day	B
Prepare Administrative Response to Comments Document	LSA	2.5 weeks	25 weeks
Review Administrative Response to Comments Document	City	2 weeks	27 weeks
Prepare and Reproduce Response to Comments Document	LSA	1 week	28 weeks
Begin Hearings to Consider Certification of the EIR	City	10 days (min.)	29.5 weeks

B. PROJECT BUDGET

For completion of the scope of work set forth in this proposal and accomplished according to the schedule outlined, our preliminary cost estimate is \$135,000 subject to LSA's standard contract provisions included in Attachment B. A detailed breakdown of this preliminary cost estimate is provided in Table 3.

Table 3
Estimated Costs
Milpitas Senior Housing and Santa Clara County Health Center EIR

LABOR COSTS												
LSA Associates, Inc.												
Hours Rate:	Principal-in-Charge / Project Manager (Dias)	Project Planner (Paulson)	Assistant Planner (Shinn)	Word Processing (Smith)	Graphics and Production (Shinn & Linder)	Project Management (Land non-technical analysis)	Principal (Gerke)	Cultural Resources Manager (Palmer)	Paleontologist (Malzon)	Subtotal	Principal (Chung)	Air Quality Analyst (Bueger) / Noise Analyst (Lui)
	\$145	\$75	\$65	\$85	\$85	\$85	\$120	\$60	\$55		\$155	\$70
Task A Project Initiation												
(1) Start-Up Meeting	4	4				\$880				\$880		\$0
(2) Site Visit	2	2	2			\$570	3	3	3	\$705		\$0
(3) Prepare Notice of Preparation	1	4		1		\$530				\$530		\$0
(4) Base Map Preparation	1	4			12	\$1,465				\$0		\$0
(5) Data Gathering and Evaluation	2	4	4			\$850		20	10	\$1,750	3	\$1,465
(6) Scoping Session	6	6				\$1,320				\$0		\$0
(7) Project Description	2	10			4	\$1,380				\$0		\$0
(8) Significance Criteria	1	2	4			\$555				\$0		\$0
(9) Work Program Refinement	4					\$580				\$0		\$0
Subtotal for Task A	23	36	10	1	16	\$8,130	3	23	13	\$2,455	3	\$1,375
Task B Setting, Impacts, and Mitigation Measures												
(1) Land Use and Planning Policy	4	20	8	1	6	\$3,195				\$0		\$0
(2) Population and Housing	2	4	12	1		\$1,455				\$0		\$0
(3) Transportation, Circulation and Parking	16	6		1	4	\$3,195				\$0		\$0
(4) Air Quality	2	6		1	4	\$1,165				\$0	4	\$3,070
(5) Noise	2	6		1	6	\$1,335				\$0	4	\$3,560
(6) Hydrology and Water Quality	2	4		1		\$675				\$0		\$0
(7) Hazardous Materials and Public Health and Safety	2	4		1		\$675				\$0		\$0
(8) Cultural and Paleontological Resources	6	4		1	8	\$1,935	11	107	40	\$9,940		\$0
(9) Aesthetic Resources	6	16	8	1	8	\$3,355				\$0		\$0
Subtotal for Task B	42	70	28	9	36	\$16,985	11	107	40	\$9,940	8	\$77
Task C Cumulative and Growth Inducing Impacts												
Subtotal for Task C	8	12		1		\$2,145				\$0		\$0
Task D Alternatives												
Subtotal for Task D	8	16		2	4	\$2,870				\$0		\$0
Task E CEQA Conclusions												
Subtotal for Task E	2	6	4	1		\$1,085				\$0		\$0
Task F Draft Environmental Impact Report												
(1) First Administrative Draft EIR	12	8	8	12	8	\$4,560				\$0		\$0
(2) Screencheck Draft EIR	10	24	4	12	4	\$4,870	2	7	3	\$825	1	\$505
(3) Draft EIR	8	12	4	8	4	\$3,340				\$0		\$0
Subtotal for Task F	30	44	16	32	16	\$12,770	2	7	3	\$825	1	\$505
TOTAL LABOR COST FOR DRAFT EIR	113	184	56	46	72	\$43,985	16	137	56	\$13,220	12	\$95
											\$8,510	\$65,715

Table 3
Estimated Costs
Milpitas Senior Housing and Santa Clara County Health Center EIR

LABOR COSTS																													
LSA Associates, Inc.																													
Hourly Rate	Project Manager (Dias)		Project Planner (Paulsen)		Assistant Planner (Simont)		Word Processing (Smith)		Graphics and Production (Shimmin & Linder)		Project Management (and non-technical analysis)		Subtotal		Principal (Genke)		Cultural Resources Manager (Palmer)		Paleontologist (Matzen)		Subtotal		Principal (Crump)		Air Quality Analyst (Brugger)		Air Quality and Noise Subtotal		LSA Total
	\$145	\$75	\$65	\$85	\$85	\$85	\$85	\$85	\$120	\$60	\$55	\$1,660	\$155	\$70	\$155	\$590	\$9,380												
Task G Responses to Comments Document																													
(1) Administrative Draft RTC Addendum																													
(2) Screencheck RTC Addendum																													
(3) Final RTC																													
Subtotal for Task G																													
Task H Mitigation Monitoring and Reporting Program																													
Subtotal for Task H																													
Task I Project Management																													
Subtotal for Task I																													
Task J Meetings																													
Subtotal for Task K																													
TOTAL LABOR (ALL TASKS)																													
MISCELLANEOUS COSTS																													
1. Deliveries																													
2. Travel																													
3. Maps; Plans; Reports; Databases																													
4. Photographic Products																													
5. Printing																													
6. Graphic Reproduction																													
7. Record Searches																													
SUBCONSULTANT COSTS																													
7. Baseline Environmental Consulting*																													
8. Fehr & Peers Associates																													
Subconsultant and Direct Cost Handling Fee (10%)																													
TOTAL MISCELLANEOUS COSTS																													
*Baseline budget detail located in Attachment C																													
TOTAL COST																													
TOTAL LSA TEAM BUDGET																													
\$134,375																													
OPTIONAL TASKS																													
Prepare Phase I Site Assessment Report																													
\$3,370																													

EXHIBIT "C"
INSURANCE COVERAGE DOCUMENTS;
by LSA Associates, Inc..